

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROGELIO OCHOA,

Plaintiff,

vs.

No. CIV 10-1188 CEG/LAM

UNITED STATES OF AMERICA,

Defendant.

ANSWER TO COMPLAINT FOR DAMAGES

Defendant United States of America, by and through undersigned counsel, hereby answers Plaintiff's Complaint For Damages (Complaint) as follows:

1. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint and therefor denies the same.
2. Defendant denies the allegations in paragraph 2 of the Complaint.
3. Defendant denies the allegations in paragraph 3 of the Complaint.
4. Defendant admits the allegations in paragraph 4 of the Complaint.
5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint and therefor denies the same.
6. Defendant denies the allegations in paragraph 6 of the Complaint.
7. Defendant denies the allegations in paragraph 7 of the Complaint.
8. Paragraph 8 of the Complaint contains Plaintiff's prayer for relief. Insofar as a response is required, Defendant denies Plaintiff is entitled to any such relief.

FIRST AFFIRMATIVE DEFENSE

The sole proximate cause of the injuries and damages of which Plaintiff complains was an act or acts of Plaintiff, and Defendant is not liable therefor.

SECOND AFFIRMATIVE DEFENSE

If Defendant's agents and/or employees were in any way negligent, which is specifically denied, then an act or acts of Plaintiff contributed to the injuries and damages of which Plaintiff complains, and Defendant is not liable therefor.

THIRD AFFIRMATIVE DEFENSE

If Defendant's agents and/or employees were in any way negligent, which is specifically denied, then an act or acts of a third party or parties contributed to the injuries and damages of which Plaintiff complains, and Defendant is not liable therefor.

FOURTH AFFIRMATIVE DEFENSE

To the extent any damages are awarded to Plaintiff herein, Defendant is entitled to an offset for any benefits paid to or on behalf of Plaintiff by any agency of the United States or through any state agency which receives funds from the United States.

FIFTH AFFIRMATIVE DEFENSE

If Plaintiff suffered injuries and damages as a result of the negligence of any person or entity, which is specifically denied, then the injuries and damages resulted from the negligence of third parties not employed by Defendant; as such, they are independent contractors, and Defendant may not be held responsible for their actions.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's recovery in this action is limited to the amount of the claim which Plaintiff presented administratively. 28 U.S.C. § 2675(b).

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate her damages.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to prejudgment interest against Defendant. 28 U.S.C. § 2674.

NINTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over the allegations contained in Plaintiff Complaint.

TENTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2412(d)(1)(A), Plaintiff cannot recover attorney's fees from Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

For the foregoing reasons, Defendant United States of America respectfully requests the Court for an Order dismissing Plaintiff's Complaint with prejudice, for costs incurred herein, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

KENNETH J. GONZALES
United States Attorney

Filed electronically 12/17/10

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 12/17/10, I filed the foregoing pleading electronically through the CM/ECF system, and that the following parties were served by first-class mail:

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/s/ Michael H. Hoses
MICHAEL H. HOSES
Assistant United States Attorney